

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Sheila Roundtree; and Major Walters,) No. CV-09-269-PHX-DGC

10 Plaintiffs,)

ORDER

11 vs.)

12 Atlantic Development and Investment;)
13 Gerald Bisgrove; Greater Phoenix Urban)
14 League; George Dean; Paradise Palms)
15 Community Housing L.P., Mark Breen,)
16 Paradise Palms Multi-Housing L.P. I &)
17 II; Brad H. Davis; WRMC, Inc.;)
18 Richman Property Services; Lucy)
Ramirez; US Collections West, Inc.;)
Donald Darnell; and Alan H.)
Zimmerman Esq.,)

Defendants.)

19 Sheila Roundtree and two of her children, Cyera Roundtree and Major Walters, lived
20 at Paradise Palms apartments located in Phoenix, Arizona. On July 1, 2007, Roundtree
21 informed Paradise Palms that she did not intend to renew her lease and would vacate her
22 apartment at the end of the month. Roundtree and Walters applied for a lease at Indigo
23 Palms apartments. At the request of Indigo Palms, Lucy Ramirez, the property manager for
24 Paradise Palms, completed a residential verification form in which she stated that Roundtree
25 had been sent to court every month, did not pay her rent for July, and had caused problems
26 in connection with her move-out. Indigo Palms denied Roundtree and Walter's lease
27 application. Roundtree subsequently received a bill from Paradise Palms for more than
28 \$2,000 for alleged cleaning and repair charges.

1 Roundtree and Walters commenced this action on February 10, 2009. Dkt. #1.
2 Plaintiffs allege that the statements made by Ramirez in the residential verification form are
3 false, that they led to the denial of Plaintiffs' application for a lease at Indigo Palms, and that
4 as a result of not getting that lease Plaintiffs suffered extreme financial and emotional
5 hardship. Dkt. #7 ¶¶ 22-48. Plaintiffs further allege that the purported cleaning and repair
6 charges were fabricated by Paradise Palms as evidenced by forged documents, outdated
7 records, fake invoices, and the dismissal of the state court lawsuit brought to collect the
8 alleged debt. *Id.* ¶¶ 57-69. Plaintiffs' amended complaint asserts various state law claims
9 against the purported owners of Paradise Palms, certain principals and employees of those
10 entities, and associated companies: Atlantic Development and Investment ("ADI"), Paradise
11 Palms Community Housing L.P., Paradise Palms Multi-Housing L.P. I & II, Greater Phoenix
12 Urban League, Gerald Bisgrove, George Dean, Mark Breen, Brad Davis, Lucy Ramirez,
13 WRMC, Inc., and Richman Property Services (collectively, "ADI Defendants"). The
14 complaint also asserts a federal claim under the Fair Debt Collections Practices Act
15 ("FDCPA") against those retained to collect the alleged debt owed to Paradise Palms:
16 US Collections West, Inc., its president, Donald Darnell, and attorney Alan Zimmerman
17 (collectively, "Collection Defendants"). *Id.* ¶¶ 49-55, 78; *see* Dkt. #40 ¶¶ 18-19. Plaintiffs
18 seek actual and statutory damages under the FDCPA and compensatory and punitive
19 damages for the state common law claims. *Id.* at 17, ¶¶ d, g.

20 The ADI Defendants have filed motions to dismiss. Dkt. ##23, 32, 41. Plaintiffs have
21 filed a host of motions. Dkt. ##27, 28, 31, 37, 38, 39, 43, 51, 52. The Court will address
22 each motion.¹

23 **I. ADI Defendants' Motions to Dismiss.**

24 Plaintiffs assert federal question jurisdiction pursuant to 28 U.S.C. § 1331 and the
25 FDCPA, 15 U.S.C. § 1692. Dkt. #7 ¶ 2. The ADI Defendants correctly note that the FDCPA

26
27 ¹The requests for oral argument are denied because the parties have fully briefed the
28 issues and oral argument will not aid the Court's decision. *See Lake at Las Vegas Investors
Group, Inc. v. Pac. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 claim – the only federal claim asserted in the complaint – does not apply to them. *See id.*
2 ¶ 78. The ADI Defendants argue that original subject matter jurisdiction does not exist with
3 respect to the state law claims and the Court should decline to exercise pendent jurisdiction
4 over those claims. *See* Dkt. ##23, 32, 41.

5 “Under 28 U.S.C. § 1367(a), if a federal court has original jurisdiction over a civil
6 action, it may exercise supplemental jurisdiction over state law claims that ‘are so related to
7 the claims in the action within such original jurisdiction that they form part of the same case
8 or controversy[.]’” *Savage v. Glendale Union High School*, 343 F.3d 1036, 1051 (9th Cir.
9 2003); *see United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). Where the
10 “same case or controversy” requirement of § 1367(a) is satisfied, the exercise of
11 supplemental jurisdiction is usually mandatory unless one of the exceptions set forth in
12 § 1367(c) applies. *See Executive Software N. Am., Inc. v. U.S. Dist. Ct.*, 24 F.3d 1545,
13 1555-56 (9th Cir. 1994), *overruled on other grounds by Cal. Dep’t of Water Res. v. Powerex*
14 *Corp.*, 533 F.3d 1087 (9th Cir. 2008). Under § 1367(c), a court may decline to exercise
15 supplemental jurisdiction over related state claims if (1) the claims raise novel or complex
16 issues of state law, (2) the claims substantially predominate over the federal claim, (3) the
17 federal claim has been dismissed, or (4) there are other compelling reasons for declining
18 jurisdiction.

19 The Court concludes that even if the state claims are closely related to the FDCPA
20 claim for purposes of § 1367(a) (*see* Dkt. #40 ¶ 49), supplemental jurisdiction should not be
21 exercised under § 1367(c)(1) and (2) because the state claims raise complex issues of state
22 law and substantially predominate over the FDCPA claim in terms of proof, the scope of the
23 issues raised, and the type and amount of available damages. Plaintiffs assert a total of six
24 claims, five of which are state common law claims asserted against the ADI Defendants:
25 false light, defamation, tortious interference, harassment, and intentional infliction of
26 emotional distress. Dkt. #7 ¶¶ 75-77, 79-81. Those claims involve numerous different
27 elements and likely will lead to the assertion of various defenses unique to Arizona law. *See,*
28 *e.g., Godbehere v. Phoenix Newspapers, Inc.*, 783 P.2d 781 (Ariz. 1989) (false light); *Turner*

1 *v. Devlin*, 848 P.2d 286 (Ariz. 1993) (defamation); *Wagenseller v. Scottsdale Mem'l Hosp.*,
2 710 P.2d 1025 (Ariz. 1985) (tortious interference); *Lucchesi v. Stimmell*, 716 P.2d 1013
3 (Ariz. 1986) (intentional infliction of emotional distress). The FDCPA claim, by contrast,
4 focuses on a narrow realm of facts concerning the use of abusive, deceptive and/or unfair
5 debt collection practices by the Collection Defendants. See Dkt. #7 ¶¶ 49-55, 78; 15 U.S.C.
6 § 1692 et seq. Plaintiffs may recover punitive damages for their common law claims upon
7 a showing of “malice,” see *Rawlings v. Apodaca*, 726 P.2d 565, 578 (Ariz. 1986), but
8 “punitive damages are not recoverable under the FDCPA.” *Wood v. Midland Credit Mgmt.*,
9 *Inc.*, No. CV 053881 FMCMANX, 2005 WL 3159639, at *5 (C.D. Cal. July 29, 2005);
10 see *Catalfamo v. Countrywide Home Loan*, No. CV F08-117 LJO TAG, 2008 WL 4158432,
11 at *5 (E.D. Cal. Sept. 4, 2008); 15 U.S.C. § 1692k. Plaintiffs’ “state law claims would
12 substantially expand the scope of this case beyond that necessary and relevant to the federal
13 claims under the FDCPA.” *Johnson v. Advantage Sales & Mktg., LLC*, No. 06-11641, 2006
14 WL 1007606, at *3 (E.D. Mich. Apr. 18, 2006).

15 The Court is mindful that the exercise of supplemental jurisdiction may serve the
16 values of judicial economy and convenience to Plaintiffs, see *Executive Software*, 24 F.3d
17 at 1556, but these values are outweighed by the interests of comity and federalism, as well
18 as avoidance of juror confusion caused by litigating the state claims and the FDCPA claim
19 together. See *Richard v. Oak Tree Group, Inc.*, 614 F. Supp. 2d 814, 825 (W.D. Mich. 2008)
20 (declining to exercise supplemental jurisdiction over state claims related to FDCPA claim
21 based on the interest of comity); *Mitchell v. Allied Interstate, Inc.*, No. 06-14296, 2006 WL
22 3345152, at *2 (E.D. Nov. 17, 2006) (contemporaneous presentation of state claims and
23 related FDCPA claim would “result in undue confusion of the jury”); *Johnson*, 2006 WL
24 1007606, at *2 (economy and convenience of entertaining supplemental state claims are
25 often “offset by the problems they create”). Pursuant to § 1367(c)(1) and (2), the Court
26 declines to exercise supplemental jurisdiction over Plaintiffs’ state claims. The Court
27 accordingly will grant the ADI Defendants’ motions and dismiss the state claims without
28 prejudice. See *Johnson*, 2006 WL 1007606, at *3; *Mitchell*, 2006 WL 3345152, at *2;

1 *LeBlanc v. Advance Credit Corp.*, No. 8:06CV747 T27EAJ, 2007 WL 141173, at *5 (M.D.
2 Fla. Jan. 16, 2007) (state claims substantially predominated where FDCPA claim was
3 asserted against only two of the six defendants); *Cole v. Toll*, No. 07-0590, 2007 WL
4 4105382, at *8 (E.D. Pa. Nov. 16, 2007) (dismissing state claims with respect to certain
5 defendants where the related FDCPA claim did not apply to them); *Semi-Tech Litig. LLC v.*
6 *Bankers Trust Co.*, 234 F. Supp. 2d 297, 300-01 (S.D.N.Y. 2002) (declining supplemental
7 jurisdiction where the factual and legal questions unique to the common law claims against
8 the moving defendants overwhelmed any questions common to the federal claims asserted
9 against another defendant); *see also San Pedro Hotel Co. v. City of L.A.*, 159 F.3d 470, 478-
10 79 (9th Cir. 1998) (district court did not abuse its discretion in dismissing state claims under
11 § 1367(c)(2)).

12 Plaintiffs will not be unduly prejudiced by the dismissal of the state claims given that
13 this case is in its early stages and, to the extent the state law claims were brought within the
14 applicable limitations period, they may be re-filed in state court within six months of the date
15 of this order pursuant to Arizona's savings statute, A.R.S. § 12-504. *See* 28 U.S.C. § 1367(d)
16 (limitations period for dismissed claims "shall be tolled while the claim is pending and for
17 a period of 30 days after it is dismissed unless State law provides for a longer tolling
18 period"); *Ochser v. Maricopa County*, No. CIV 05-2060 PHX RCB, 2007 WL 1577910,
19 at *3 n.1 (D. Ariz. May 31, 2007).

20 **II. Plaintiffs' Motions to Amend Complaint.**

21 Plaintiffs have filed motions to amend the complaint. Dkt. ##28, 39. Plaintiffs argue
22 that leave to amend should be granted because the jurisdictional deficiency in the first
23 amended complaint can be cured through the assertion of supplemental jurisdiction under
24 28 U.S.C. § 1367. Dkt. ##28 ¶ 10, 39 ¶ 8; *see* Dkt. #40 ¶ 2. Because the Court declines to
25 exercise supplemental jurisdiction, the motions to amend will be denied as moot.

26 **III. Plaintiffs' Motions Relating to Service.**

27 Plaintiffs have filed a motion for an extension of time to serve (Dkt. #37) and motions
28 for leave to serve through alternative means (Dkt. ##38, 43). The Court will deny the

1 motions as moot with respect to the unserved ADI Defendants (Bisgrove, Dean, Ramirez,
2 and WRMC, Inc.).

3 With respect to Defendant Darnell, the record reflects that Plaintiffs attempted to serve
4 Darnell (and US Collections West) on April 22, 2009 by leaving a summons and the
5 complaint with the purported statutory agent, Kay Kasey. Dkt. #8; *see* Dkt. #11. Ms. Kasey
6 apparently is not the statutory agent of US Collections West nor is she authorized to accept
7 service on behalf of Darnell individually. *See* Dkt. #37 at 11-14. Because Plaintiffs' good
8 faith effort to effect service on Defendant Darnell proved unsuccessful, the Court will grant
9 Plaintiffs until **August 21, 2009** to serve Darnell. Plaintiffs do not seek an extension to serve
10 US Collections West.

11 The Court will deny the motions for alternate service. If Plaintiffs are unable, despite
12 diligent efforts, to serve Darnell pursuant to the Federal Rules of Civil Procedure (through
13 waiver of service or otherwise), Plaintiffs may request service by the United States Marshal's
14 Office. *See* Dkt. ##38, 43 ¶¶ 4-5; *see also* Dkt. ##3, 4, 5.

15 **IV. Plaintiffs' Motion for Default Judgment.**

16 Plaintiffs seek default judgment against Defendant US Collections West pursuant to
17 Rule 55(b) of the Federal Rules of Civil Procedure. Dkt. #31. Where a defendant's default
18 has been properly entered under Rule 55(a), the district court has discretion to grant default
19 judgment against the defendant pursuant to Rule 55(b). *See Aldabe v. Aldabe*, 616 F.2d
20 1089, 1092 (9th Cir. 1980); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). Factors
21 to be considered in deciding whether to grant default judgment include the possibility of
22 prejudice to the plaintiffs, the merits of the claims, the sufficiency of the complaint, the
23 amount of money at stake, the possibility of a dispute concerning material facts, whether
24 default was due to excusable neglect, and the policy favoring a decision on the merits. *See*
25 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

26 Plaintiffs assert in their motion that the *Eitel* factors favor default judgment (*see* Dkt.
27 #31 at 6), but do not explain why. Moreover, although default has been entered against
28 US Collections West (Dkt. #42), it is not clear from the record that service was proper. *See*

1 Dkt. #31 at 2 & n.1; Dkt. #37 at 11-14. The Court will deny the motion for default judgment
2 without prejudice.

3 **V. Plaintiffs' Motion to Strike.**

4 Plaintiffs have filed a motion to strike the affirmative defenses asserted in Defendant
5 Zimmerman's answer to the amended complaint. Dkt. #27; *see* Dkt. #21. Plaintiffs contend
6 that the answer fails to give Plaintiffs fair notice of the basis for the affirmative defenses. *See*
7 *id.* The Court agrees with Defendant that the motion is premature given that no discovery
8 has been conducted. *See* Dkt. #34. The Court will deny Plaintiffs' motion without prejudice.

9 **VI. Plaintiffs' Motions to Allow Electronic Filing.**

10 Plaintiffs seek permission to electronically file and serve documents in this case.
11 Dkt. ##51, 52. The motions will be denied because the Court's policy is to require pro se
12 litigants to submit documents in paper form so that the Clerk's Office can ensure that the
13 documents are properly filed.

14 **IT IS ORDERED:**

- 15 1. The ADI Defendants' motions to dismiss (Dkt. ##23, 32, 41) are **granted**. The
16 state law claims asserted against the ADI Defendants (Dkt. #7 ¶¶ 75-77, 79-81)
17 are **dismissed** without prejudice.
- 18 2. Plaintiffs' motions to amend complaint (Dkt. ##28, 39) are **denied** as moot.
- 19 3. Plaintiffs' motion for extension of time to serve (Dkt. #37) is **denied in part**
20 and **granted in part**. The motion is denied as moot with respect to the ADI
21 Defendants and granted with respect to Defendant Donald Darnell. Plaintiffs
22 have until **August 14, 2009** to complete service.
- 23 4. Plaintiffs' motions for alternate service (Dkt. ##38, 43) are **denied** without
24 prejudice.
- 25 5. Plaintiffs' motion for default judgment (Dkt. #31) is **denied** without prejudice.
- 26 6. Plaintiffs' motion to strike (Dkt. #27) is **denied** without prejudice.

7. Plaintiffs' motions to allow electronic filing (Dkt. #51, 52) are **denied**.

DATED this 15th day of July, 2009.

David G. Campbell

David G. Campbell
United States District Judge